

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WILLIE SMITH,

Plaintiff,

v.

HOMES, et. al.,

Defendants.

3:13-cv-00202-MMD-WGC

REPORT & RECOMMENDATION OF
U.S. MAGISTRATE JUDGE

This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. This action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice (LR) 1B 1-4. Before the court is Defendants' Motion to Dismiss. (Doc. # 36.)¹ Plaintiff filed a response (Doc. # 41) and Defendants filed a reply (Doc. # 54). Plaintiff also filed an "opposition" to Defendants' reply. (Doc. # 54.)

After a thorough review, the court recommends that Defendants' motion be denied.

I. BACKGROUND

At all relevant times Plaintiff was an inmate in custody of the Nevada Department of Corrections (NDOC). (Pl.'s Am. Compl., Doc. # 32.) The events giving rise to this action took place while Plaintiff was housed at Southern Desert Correctional Center (SDCC). (*Id.*) Plaintiff has named as defendants SDCC Caseworker Homes, SDCC Associate Warden of Programs C. Burson, and SDCC Warden Brian E. Williams. (*Id.*) To date, only defendants Homes and Williams have been served.²

¹ Refers to court's docket number.

² On May 5, 2014, the court issued an order instructing Defendants to attempt to verify whether the last known address filed under seal for Ms. Burson is current. (Doc. # 47.) On May 15, 2014, they filed an updated last known address under seal. (Docs. # 48, # 49.) On June 2, 2014, the court gave Plaintiff an additional forty-five days

1 On screening, the court determined that Plaintiff could proceed with a claim for
2 retaliation against these Defendants. (Screening Order, Doc. # 5.) Plaintiff alleges that on
3 April 21, 2011, he was transferred to SDCC from High Desert State Prison (HDSP) after he was
4 beaten and denied medical treatment. (Doc. # 32 at 4.) On April 22, 2011, he asserts that he was
5 taken to a review hearing by defendant Homes to be released from solitary confinement;
6 however, once defendant Homes learned that an NDOC officer was being investigated for
7 assaulting Plaintiff, Homes refused to allow Plaintiff to be released into general population and
8 Plaintiff was held in solitary confinement for three months as a form of retaliatory punishment.
9 (*Id.*) Plaintiff asserts that he contacted defendant Williams on several occasions and advised him
10 of his situation and requested his help, to no avail. (*Id.* at 4-5.) He further avers that on June 13,
11 2011, he filed a grievance, but defendant Burson denied it, which he says confirms defendant
12 Williams' policy of violating inmates' civil rights. (*Id.* at 5.) Plaintiff claims their conduct was
13 retaliatory. (*Id.*)

14 In their Motion to Dismiss, Defendants argue that Plaintiff previously litigated and settled
15 claims related to an alleged assault occurring at HDSP on March 24, 2011, in 3:12-cv-00024-
16 LRH-VPC (case filed January 1, 2012). (Doc. # 36 at 2; Doc. # 36-1 (Compl. in 3:12-cv-00024-
17 LRH-VPC.) They contend that on May 21, 2012, Plaintiff entered into a settlement in 2:12-cv-
18 00024-LRH-VPC as part of a court-ordered early mediation. (Doc. # 36 at 3.) A written
19 settlement agreement was prepared (Doc. # 36 at 3; Doc. # 36-2); however, Plaintiff then refused
20 to sign the settlement agreement, arguing he entered into the agreement under duress. (*Id.*) The
21 defendant filed a motion to enforce the settlement agreement. (Doc. # 36-3 at 2.) Magistrate
22 Judge Cooke found that a settlement was reached on May 21, 2012, and issued a report and
23 recommendation that the District Court enter an order enforcing the settlement agreement and
24 dismissing the case with prejudice. (Doc. # 36-3.) The report and recommendation was adopted
25 by District Judge Hicks. (Doc. # 36-2.) The settlement agreement was ratified as a binding
26 settlement agreement and a copy of that document was attached to the order, the motion to
27 enforce the settlement agreement was granted, and the case was dismissed with prejudice. (*Id.*)

28

to serve Ms. Burson. (Doc. # 53.)

1 Now, in this action Defendants point to a release of all claims provision contained within
2 the written agreement ratified by the court and enforced against Plaintiff in 3:12-cv-00024-LRH-
3 VPC which states that Plaintiff was agreeing to settle: "all claims, disputes and controversies
4 arising from and related to the complaint filed in case 3:12-cv-0024-LRH-WGC." (Doc. # 36-3.)³
5 Defendants contend that the administrative housing placement at issue in this case arose from the
6 assault that was the subject of 3:12-cv-00024-LRH-VPC; therefore, pursuant to release of all
7 claims provision contained in the written agreement, this action should be dismissed. (Doc. # 36
8 at 3-4.)

9 Plaintiff makes several arguments in opposing Defendants' motion. First, he contends that
10 case 3:12-cv-00024-LRH-VPC has been appealed, and therefore it is not a final matter so
11 Defendants may not argue it bars this action. (Doc. # 41 at 2, 4.) Second, he contends that the
12 claims in this case are distinguishable from the claims asserted in the prior action; therefore, this
13 action cannot be barred by res judicata principles. (*Id.* at 4.) Third, he asserts that the release
14 language in 12-cv-00024-LRH-VPC did not contemplate this lawsuit because the events
15 described in this action did not arise directly or indirectly from the facts described in the prior
16 case. (*Id.* at 5.)

17 In their reply, Defendants assert that Plaintiff is confusing the doctrines of res judicata
18 and collateral estoppel and that the retaliation claim in this case arises from the same transaction
19 in which Plaintiff alleged the officer in 12-cv-00024-LRH-VPC used excessive force.
20 (Doc. # 50.) The further contend that the parties agreed to resolve "all claims, disputes and
21 controversies arising from and related to the complaint" in 12-cv-00024-LRH-VPC, so the action
22 must be dismissed. Finally, they contend that an appeal pending in 12-cv-00024-LRH-VPC does
23 not open the door for the filing of a new lawsuit arising from that action. (*Id.*)

24 In his response to Defendants' reply (which Defendants have not moved to strike),
25 Plaintiff argues that the release provision Defendants contend bars this action was not one of the
26 terms the parties agreed to that was recited on the record in 3:12-cv-00024-LRH-VPC.

27
28 ³ As will be discussed, *infra*, the release of all claims provision contained in the written agreement was *not*
one of the terms recited on the record following the mediation.

1 (Doc. # 54.) While the Local Rules of Practice only permit the filing of a motion, response and
2 reply, the court will afford Plaintiff, a pro se inmate litigant, with some latitude and will consider
3 his response to Defendants' reply since the subject motion is potentially case-dispositive.

4 **II. LEGAL STANDARD**

5 Defendants have filed this as a motion to dismiss under Federal Rule of Civil Procedure
6 12(b)(6) for failure to state a claim upon which relief may be granted. (Doc. # 36 at 2:21-22.)
7 Defendants, however, rely on material beyond Plaintiff's complaint. (See Docs. # 36-1, # 36-2,
8 # 36-3.) As a general rule, the court may not consider any material beyond the pleadings in
9 ruling on a motion to dismiss for failure to state a claim without converting it into a motion for
10 summary judgment. *See Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001); *see also*
11 *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (per curiam) (the court will "consider
12 only allegations contained in the pleadings, exhibits attached to the complaint, and matters
13 properly subject to judicial notice"). Therefore, the court will consider this as a motion for
14 summary judgment.

15 Plaintiff was advised after the motion was filed that if evidence was submitted with the
16 motion, the court would treat it as a motion for summary judgment and was advised about what
17 he needed to do to oppose the motion. (Doc. # 37.)

18 "The purpose of summary judgment is to avoid unnecessary trials when there is no
19 dispute as to the facts before the court." *Northwest Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18
20 F.3d 1468, 1471 (9th Cir. 1994) (citation omitted). In considering a motion for summary
21 judgment, all reasonable inferences are drawn in favor of the non-moving party. *In re Slatkin*,
22 525 F.3d 805, 810 (9th Cir. 2008) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255
23 (1986)). "The court shall grant summary judgment if the movant shows that there is no genuine
24 dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R.
25 Civ. P. 56(a). On the other hand, where reasonable minds could differ on the material facts at
26 issue, summary judgment is not appropriate. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
27 250 (1986).

28 A party asserting that a fact cannot be or is genuinely disputed must support the
assertion by:

1 (A) citing to particular parts of materials in the record, including depositions,
2 documents, electronically stored information, affidavits or declarations,
3 stipulations (including those made for purposes of the motion only), admissions,
interrogatory answers, or other materials; or

4 (B) showing that the materials cited do not establish the absence or presence of a
genuine dispute, or that an adverse party cannot produce admissible evidence to
5 support the fact.

6 Fed. R. Civ. P. 56(c)(1)(A), (B).

7 If a party relies on an affidavit or declaration to support or oppose a motion, it "must be
8 made on personal knowledge, set out facts that would be admissible in evidence, and show that
9 the affiant or declarant is competent to testify on the matters stated." Fed. R. Civ. P. 56(c)(4).

10 In evaluating whether or not summary judgment is appropriate, three steps are necessary:
11 (1) determining whether a fact is material; (2) determining whether there is a genuine dispute as
12 to a material fact; and (3) considering the evidence in light of the appropriate standard of proof.
13 *See Anderson*, 477 U.S. at 248-250. As to materiality, only disputes over facts that might affect
14 the outcome of the suit under the governing law will properly preclude the entry of summary
15 judgment; factual disputes which are irrelevant or unnecessary will not be considered. *Id.* at 248.

16 In deciding a motion for summary judgment, the court applies a burden-shifting analysis.
17 "When the party moving for summary judgment would bear the burden of proof at trial, 'it must
18 come forward with evidence which would entitle it to a directed verdict if the evidence went
19 uncontroverted at trial.'...In such a case, the moving party has the initial burden of establishing
20 the absence of a genuine [dispute] of fact on each issue material to its case." *C.A.R. Transp.*
21 *Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (internal citations
22 omitted). In contrast, when the nonmoving party bears the burden of proving the claim or
23 defense, the moving party can meet its burden in two ways: (1) by presenting evidence to negate
24 an essential element of the nonmoving party's case; or (2) by demonstrating the nonmoving party
25 failed to make a showing sufficient to establish an element essential to that party's case on which
26 that party will bear the burden of proof at trial. *See Celotex Corp. v. Cartrett*, 477 U.S. 317, 323-
27 25 (1986).

28 If the moving party satisfies its initial burden, the burden shifts to the opposing party to
establish that a genuine dispute exists as to a material fact. *See Matsushita Elec. Indus. Co. v.*

1 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a genuine dispute of
 2 material fact, the opposing party need not establish a genuine dispute of material fact
 3 conclusively in its favor. It is sufficient that "the claimed factual dispute be shown to require a
 4 jury or judge to resolve the parties' differing versions of the truth at trial." *T.W. Elec. Serv.,*
 5 *Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987) (quotation marks and
 6 citation omitted). The nonmoving party cannot avoid summary judgment by relying solely on
 7 conclusory allegations that are unsupported by factual data. *Id.* Instead, the opposition must go
 8 beyond the assertions and allegations of the pleadings and set forth specific facts by producing
 9 competent evidence that shows a genuine dispute of material fact for trial. *Celotex*, 477 U.S. at
 10 324.

11 That being said,

12 [i]f a party fails to properly support an assertion of fact or fails to properly address
 13 another party's assertion of fact as required by Rule 56(c), the court may: (1) give
 14 an opportunity to properly support or address the fact; (2) consider the fact
 15 undisputed for purposes of the motion; (3) grant summary judgment if the motion
 and supporting materials—including the facts considered undisputed—show that
 the movant is entitled to it; or (4) issue any other appropriate order.

16 Fed. R. Civ. P. 56(e).

17 At summary judgment, the court's function is not to weigh the evidence and determine
 18 the truth but to determine whether there is a genuine dispute of material fact for trial. *See*
 19 *Anderson*, 477 U.S. at 249. While the evidence of the nonmovant is "to be believed, and all
 20 justifiable inferences are to be drawn in its favor," if the evidence of the nonmoving party is
 21 merely colorable or is not significantly probative, summary judgment may be granted. *Id.* at 249-
 22 50 (citations omitted).

23 **III. DISCUSSION**

24 **A. Procedural History**

25 Plaintiff filed a complaint in 3:12-cv-00024-LRH-VPC, which was screened and filed on
 26 February 6, 2012, alleging that he had been assaulted by officers at HDSP on March 24, 2011,
 27 and was subsequently denied medical care for his injuries. (*See* Doc. # 36-1; Doc. # 5 in 3:12-cv-
 28 00024-LRH-VPC.) The action was referred to the court's Early Mediation Program and Margaret
 Crowley was appointed as mediator in the case. (*See* Doc. # 36-3 at 2-3.) The mediation took

1 place on May 21, 2012, and at the conclusion Ms. Crowley went on the record to report that the
 2 parties had settled the case and placed the terms of the settlement on the record. (*Id.* at 3.) The
 3 settlement terms were stated on the record as follows⁴:

- 4 1. As soon as reasonably practicable, defendant will arrange for plaintiff to have a
 5 medical evaluation by a physician other than Dr. Koehn.
- 6 2. The physician will evaluate whether plaintiff should be treated with Tylenol or
 7 ibuprofen for his pain; whether plaintiff requires further treatment concerning his
 8 complaint of sinus problems; and will evaluate whether plaintiff requires any
 9 treatment, including braces or ace bandages, for his knees.
- 10 3. The parties will abide by the decision of the physician with respect to
 11 recommendations for treatment for these medical conditions.
- 12 4. The defendant will eliminate any debts plaintiff owes to NDOC to a balance of
 13 \$0.
- 14 5. Plaintiff will not be required to pay the \$350.00 filing fee.
- 15 6. Defendant will deposit the sum of \$100.00 in plaintiff's inmate Trust II
 16 account, and this sum cannot be used to reduce plaintiff's other debts or charges.
- 17 7. The defendant will prepare a written settlement agreement stating these
 18 settlement terms.
- 19 8. After the settlement agreement is signed, the parties will stipulate to dismiss
 20 this case, and the lawsuit will end.
- 21 9. The court retains jurisdiction over the case until the settlement is concluded and
 22 the case ends.

23 (Doc. # 36-3 at 3.)

24 Ms. Crowley asked plaintiff and defendant's attorney if they agreed to these terms, and
 25 both stated on the record that they did agree to the terms. (*Id.*) She then asked if there were any
 26 additional terms that should be placed on the record. (*Id.*) Defendant's counsel replied that there
 27 was nothing more, and plaintiff replied, "Not that I know of." (*Id.*) Notably, there was no
 28 mention of a release of all claims provision in the recitation of the terms.

Defendant's counsel then drafted a settlement agreement and prepared a stipulation and
 order dismissing the case with prejudice. (Doc. # 36-3 at 4.) The documents were delivered to
 Plaintiff for his review and signature, but he refused to sign them, arguing that he entered into
 the agreement under the pressure of the mediator and did not want to sign the documents. (*Id.*)

The settlement agreement entered into in 3:12-cv-00024-LRH-VPC states in pertinent
 part:

⁴ The undersigned Magistrate Judge did not independently listen to the audio recording of the statement of
 terms placed on the record at the conclusion of the mediation but relies on the recitation of such terms in Magistrate
 Judge Cooke's report and recommendation in 3:12-cv-00024-LRH-VPC, as she indicates she did listen to the record
 and reported the terms. (*See* Doc. # 36-3.)

1 A. This Agreement addresses and resolves a dispute arising from and relating to
 2 Plaintiff's conditions of confinement during his incarceration in the Nevada
 3 Department of Corrections. This dispute concerns alleged Constitutional rights
 4 violations relating to Plaintiff's medical care, and allegations of use of excessive
 5 force during a certain period of time, as described in Plaintiff's civil rights
 6 complaint in Case 3:12-cv-00024-LRH-WGC⁵, currently pending before the
 7 United States District Court for the District of Nevada.

8 ...
 9 THE NDOC AND PLAINTIFF HEREBY AGREE AS FOLLOWS:

10 A. CONSIDERATION, RELEASE AND DISCHARGE

11 The following legal consideration, release and discharge of claims is
 12 hereby exchanged by and among the NDOC and Plaintiff, in support of and in
 13 execution of this Agreement, **to settle all claims, disputes and controversies**
 14 **arising from and relating to the complaint filed in case 3:12-cv-00024-LRH-**
 15 **WGC.**⁶

16 ...
 17 2. Plaintiff hereby releases and discharge the Defendants of and from any
 18 liability **relating to the civil rights complaint filed in case 3:12-cv-00024-LRH-**
 19 **WGC.**⁷ Plaintiff agrees to execute a stipulation for dismissal of this lawsuit with
 20 prejudice.

21 ...
 22 C. COMPROMISE

23 The NDOC and Plaintiff agree that this Agreement is a complete compromise of
 24 matters involving disputed issues of law and **facts relating to the allegation**
 25 **asserted in this litigation.** The parties understand and agree that this Agreement
 26 is a compromise of a disputed claim. The parties understand and agree that the
 27 consideration given by the NDOC in exchange for Plaintiff's consideration of
 28 dismissal of all claims against the NDOC asserted in case 3:12-cv-00024-LRH-
 WGC, as set forth herein, is not to be construed and shall never at any time for
 any purpose be considered an admission of liability on the part of any party.

29 ...
 30 E. DISMISSAL

31 Plaintiff hereby agrees to execute a *Stipulation and Order for Dismissal*,
 32 dismissing with prejudice all claims asserted against the NDOC and any/all
 33 Defendants in this litigation...

34 F. GOOD FAITH SETTLEMENT

35 This agreement is entered into in good faith. This Agreement fully settles
 36 all claims that Plaintiff has asserted against Defendants in case 3:12-cv-00024-
 37 LRH-WGC.⁸

38 (Doc. # 36-2 (bold emphasis added.)

39 The defendant filed a motion to enforce the settlement agreement in 3:12-cv-00024-LRH-

40 ⁵ This appears to be a typographical error in the case number and should read: 3:12-cv-00024-LRH-VPC.

41 ⁶ This is another typographical error in the case number, it should be 3:12-cv-00024-LRH-VPC (not
 42 WGC).

43 ⁷ Another error in the case number.

44 ⁸ Another error in the case number.

1 VPC. (*See* Doc. # 36-3 at 2; Docs. # 13, # 14 in 3:12-cv-00024-LRH-VPC.) Magistrate Judge
2 Cooke issued a report and recommendation on the motion on July 19, 2012. (*See* Doc. # 36-3;
3 Doc. # 17 in 3:12-cv-00024-LRH-VPC.) She indicated that she listened to the recording where
4 Ms. Crowley put the settlement terms on the record and reviewed the written settlement
5 agreement and found "that the oral agreement of the parties and the written agreement comport
6 with one another and that the settlement was complete" and that Plaintiff was not under duress in
7 entering into the agreement, and therefore the agreement should stand. (Doc. # 36-3 at 5; Doc. #
8 17 at 4 in 3:12-cv-00024-LRH-VPC.) Magistrate Judge Cooke recommended that an order be
9 entered ratifying the settlement agreement as a binding agreement, ordering the defendants to
10 perform as agreed, dismissing the case with prejudice and granting the motion to enforce the
11 settlement agreement. (Doc. # 36-3 at 6; Doc. # 17 at 5 in 3:12-cv-00024-LRH-VPC.)

12 On August 21, 2012, District Judge Larry R. Hicks entered an order adopting and
13 accepting Magistrate Judge Cooke's report and recommendation. (Doc. # 36-2; Doc. # 18 in
14 3:12-cv-00024-LRH-VPC.) Therefore, the settlement agreement, which was attached as Exhibit
15 A to Doc. # 13 in 3:12-cv-00024-LRH-VPC, was ratified as a binding agreement, the defendants
16 were ordered to perform under the agreement, the motion to enforce the settlement agreement
17 was granted, and the action was dismissed with prejudice. (*Id.*)

18 On July 26, 2013, the court screened and filed Plaintiff's complaint in this action (3:13-
19 cv-00202-MMD-WGC). (Docs. # 5, # 6.) As stated above, Plaintiff was permitted to proceed
20 with a retaliation claim against SDCC defendants Homes, Burson and Williams based on the
21 allegation that when he was transferred to HDSP from SDCC following his beating and denial of
22 medical care, Caseworker homes declined to allow him out of solitary confinement when he
23 determined another correctional officer was being investigated for assaulting Plaintiff. (*Id.*) He
24 contends Williams refused to intercede on his behalf when made aware of the situation, and
25 Burson's response to his grievance confirmed Williams' policy and custom of violating his
26 constitutional rights. (*Id.*)

27 Defendants now point to the release of all claims provision contained in the written
28 settlement agreement in 3:12-cv-00024-LRH-VPC to argue that Plaintiff agreed to release "all

1 claims, disputes and controversies" arising from that complaint. (Doc. # 36 at 3-4.) They contend
2 that the release of all claims provision bars this action because the placement in administrative
3 segregation at HDSP arose from the assault allegations made in 3:12-cv-00024-LRH-VPC. (*Id.*)

4 The relevant language of the settlement agreement relied on by Defendants in their
5 motion to dismiss this action is the release provision which states that Plaintiff was agreeing to
6 "settle all claims, disputes and controversies arising from and relating to the complaint filed in"
7 3:12-cv-00024-LRH-WGC. Thus, the court must first determine whether this release provision is
8 valid and enforceable against the Plaintiff.

9 **B. Was the Release of all Claims Provision Part of the Agreement Between the Parties in**
10 **3:12-cv-00024-LRH-VPC?**

11 The court has inherent authority under federal law to enforce a settlement agreement in
12 an action pending before it. *Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1987); *see also Marks-*
13 *Foreman v. Reporter Pub. Co.*, 12 F.Supp.2d 1089, 1092 (S.D. Cal. 1998) (citations omitted).
14 The settlement agreement must be complete, *Callie*, 829 F.2d at 890, and both parties must have
15 agreed to its terms. *See Harrop v. Western Airlines, Inc.*, 550 F.2d 1143, 1144-45 (9th Cir.
16 1977).

17 As indicated above, "the construction and enforcement of settlement agreements are
18 governed by principles of local law which apply to interpretation of contracts generally."
19 *O'Neil v. Bunge Corp.*, 365 F.3d 820, 832 (9th Cir. 2004) (internal quotation marks and citations
20 omitted) (applying Nevada law); *see also Turnberry Pavilion Partners, L.P. v. M.J. Dean*
21 *Constr., Inc.*, No. 2:07-CV-01042-KJD-PAL, 2009 WL 905055, at * 3 (D. Nev. 2009) (Nevada
22 law governed interpretation of the contract), *reversed on other grounds*, 378 Fed.Appx. 758 (9th
23 Cir. 2010).

24 In Nevada, settlement agreements are contracts governed by general principles of
25 contract law. *May v. Anderson*, 119 P.3d 1254, 1257, 121 Nev. 668, 672 (2005) (citation
26 omitted). "Basic contract principles require, for an enforceable contract, an offer and acceptance,
27 meeting of the minds and consideration." *Id.* (citation omitted). "A valid contract cannot exist
28 when material terms are lacking or are insufficiently certain and definite." *Id.* (citation omitted).

1 The Nevada Supreme Court has stated that "release terms are generally thought to be material to
2 any settlement agreement." *Id.* (citation omitted). Thus, "the essential terms of a release are
3 necessary to a settlement agreement's formation and that the parties have not reached a
4 settlement when the release terms are still in dispute." *Id.* (citation omitted). "However, what is
5 considered an 'essential term' of a release varies with the nature and complexity of the case and
6 must, therefore, be determined on a case-by-case basis." *Id.* (citation omitted).

7 [A]n enforceable settlement agreement cannot exist when the parties have not
8 agreed to the essential terms of the release because these provisions constitute a
9 material term of the settlement contract. Release terms are not a mere formality.
10 They are an important reason why a party enters into a settlement agreement. If
the prevention of future litigation is one of the primary goals of a settlement, the
essential terms of the release needed to achieve that goal are material to the
settlement agreement.

11 *Id.* at 119 P.3d at 1259, 121 Nev. at 674.

12 The court concludes that the record before it does not reflect that the release of all claims
13 provision now proffered by Defendants was one of the terms agreed to by Plaintiff following the
14 mediation; instead, it appears that it was essentially a new term included in the written agreement
15 prepared by the defendant following the mediation.

16 In relying on the release of all claims provision contained in the settlement agreement in
17 3:12-cv-00024-LRH-VPC in their Motion to Dismiss this action, Defendants did not point out
18 that the release provision in the written agreement was *not* one of the terms recited on the record
19 at the conclusion of the mediation by Ms. Crowley. In fact, the terms placed on the record
20 following the mediation only states the following concerning the dismissal of the action: "[t]he
21 defendant will prepare a written settlement agreement stating these settlement terms" and "[a]fter
22 the settlement agreement is signed, the parties will stipulate to dismiss this case, and the lawsuit
23 will end." (Doc. # 36-3 at 3.) There was no recitation of a term that indicated the parties agreed
24 (and more specifically the Plaintiff) to a release of all claims arising from or related to the
25 allegations of 3:12-cv-00024-LRH-VPC. Moreover, when Ms. Crowley asked whether either
26 party was aware of any additional term that was a part of the agreement, both sides answered
27 they were not aware of any additional term. (*Id.*) As the procedural history of 3:12-cv-00024-
28 LRH-VPC reflects, Plaintiff refused to sign the written agreement which eventually contained

1 the release of all claims provision which Defendants rely on now. While the written agreement
2 was ultimately ratified and enforced against the Plaintiff in that action, it was not mentioned that
3 the release of all claims provision in the written agreement did not comport with the recitation of
4 settlement terms at the conclusion of the mediation.

5 Plaintiff takes the position that he did not agree to the release provision contained in the
6 written settlement agreement that Defendants now offer as the basis for dismissing this action.
7 (Doc. # 54.) This is not fatal to formation of the agreement to settle 3:12-cv-00024-LRH-VPC
8 under *May v. Anderson*. Here, it is clear (as adjudicated by Magistrate Judge Cooke and District
9 Judge Hicks) there was an offer, acceptance, meeting of the minds and exchange of consideration
10 with respect to the agreed upon terms recited on the record at the conclusion of the mediation
11 which were then spelled out in the written agreement. The release of all claims term proffered by
12 Defendants in this action, however, was not one of the terms included on the record following
13 the mediation in 3:12-cv-00024-LRH-VPC. That does not mean that the terms agreed to by the
14 parties were wanting for an essential term. Instead, it appears that the release topic is
15 encompassed in those recited terms which indicate that the parties agreed that the release would
16 be limited to the release of the claims asserted in that action and against that defendant *only*
17 because the only component that Plaintiff agreed to on the record is that "the parties will
18 stipulate to dismiss *this* case" (3:12-cv-00024-LRH-VPC) and "the lawsuit will end." (Doc. # 36-
19 3 at 3; Doc. # 17 at 2 in 3:12-cv-00024-LRH-VPC (emphasis added)). This conclusion is further
20 supported by the fact that Mediator Crowley asked whether the parties knew of any additional
21 terms that should be placed on the record, and both stated there were none. (*Id.*) If the defendant
22 thought the parties had agreed to a broader release of claims, such as one applying to any claim
23 arising from or relating to that case, the issue should have been raised at that time.

24 If it is Defendants' contention that the parties did discuss a broader release provision
25 during their mediation negotiations in 3:12-cv-00024-LRH-VPC, but it was not included in the
26 recitation of terms on the record, that is something they will have to litigate. In any event, the
27 record before the court does not permit it to grant summary judgment in favor of Defendants
28 based on the release language in the written agreement because of the existence of genuine

1 disputes of material fact as to whether it was a term of the agreement between the parties.

2 This result is consistent with *May v. Anderson* which states that "what is considered an
3 'essential term' of a release varies with the nature and complexity of the case and must, therefore,
4 be determined on a case-by-case basis." *May v. Anderson*, 119 P.3d 1254, 1258, 121 Nev. 668,
5 673 (2005) (citing *Giovo v. McDonald*, 791 So.2d 38, 40 (Fla. Dist. Ct. App. 2001)). *May* also
6 appears to leave open to Defendants the option of arguing that the release provision in *this* case
7 was *not* an essential term. *See id.* at 119 P.3d at 1258, 121 Nev. at 674 (recognizing that some
8 courts have found the terms of a release to be inconsequential, but distinguishing those cases
9 from the facts presented in *May*). Defendants have not raised that argument here; therefore, the
10 court will not address it.

11 In conclusion, Plaintiff has raised a genuine dispute of material fact as to whether the
12 release of all claims provision was a term of the agreement between the parties to settle 3:12-cv-
13 00024-LRH-VPC.

14 **3. Was the Release of all Claims Entered into Voluntarily, Deliberately and on an**
15 **Informed Basis?**

16 Even assuming that the release of claims provision was a term of the settlement entered
17 into by the parties in 3:12-cv-00024-LRH-VPC, Defendants are still not entitled to summary
18 judgment based on that provision.

19 "Typically, '[t]he construction and enforcement of settlement agreements are governed by
20 principles of local law which apply to interpretation of contracts generally.'" *O'Neil v. Bunge*
21 *Corp.*, 365 F.3d 820, 822 (9th Cir. 2004) (quoting *United Comm. Ins. Serv., Inc. v. Paymaster*
22 *Corp.*, 962 F.2d 853, 856 (9th Cir. 1992)); *see also Botefur v. City of Eagle Point*, 7 F.3d 152,
23 156 (9th Cir. 1993). However, "conditions affecting the validity of a release of significant federal
24 rights are eminently a matter of federal law." *Jones v. Taber*, 648 F.2d 1201, 1203 (9th Cir.
25 1981) (citation omitted). "A release of claims under section 1983 is valid only if it results from a
26 decision that is voluntary, deliberate, and informed." *Id.* (citation omitted). "In the context of
27 section 1983 waivers, several factors are relevant: although both parties may agree on certain
28 facts, including the accuracy of the transcript of the claimed settlement conference, summary

1 judgment is precluded when conflicting inferences might be drawn about a party's state of mind
2 as reflected by objective indications." *Id.* at 1204. In *Jones*, the court concluded that even the fact
3 that Jones admitted that his signature on the release was "voluntary" was not controlling. *Id.* at
4 1204. In analogizing the circumstances of section 1983 plaintiffs to those of maritime claimants
5 faced with waivers or releases of claims, the court commented: "The federal solicitude for
6 claimants under section 1983 is at least as great as that for seamen and in both situations the
7 claimant's dependence on potential defendants requires the release to be examined with particular
8 care." *Id.* at 1204-05. The party seeking to rely on a release in a section 1983 action has the
9 burden of proving its validity. *See id.* at 1203-04.

10 Here, Defendants include no argument regarding the validity of the release contained in
11 the settlement agreement entered ratified in 3:12-cv-00024-LRH-VPC, other than to state that the
12 agreement was ratified and enforced by the court in that action. The court does not view this as
13 sufficient for Defendants to meet the burden of establishing the absence of a genuine dispute of
14 material fact as to the affirmative defense asserted in their dispositive motion. Even if Plaintiff
15 had agreed to the release of all claims provision as a term of the settlement, the court cannot
16 conclude on the record before it that Plaintiff voluntarily and deliberately agreed to this release
17 of all claims provision or that he was informed of the consequences of doing so.

18 As was discussed, *supra*, there is a material issue regarding whether or not Plaintiff even
19 agreed to the release of all claims provision as a term of the settlement in 3:12-cv-00024-LRH-
20 VPC. Viewing the facts in the light most favorable to Plaintiff, *i.e.*, that there was no meeting of
21 the minds to include it as one of the settlement terms, this tends to demonstrate that Plaintiff did
22 not deliberately or voluntarily agree to a release of all claims. Nor is there any evidence in the
23 record that Plaintiff was informed of the consequences of such a release provision.

24 Plaintiff was an indigent inmate litigant representing himself at the mediation while the
25 defendant had the benefit of an attorney. *See Jones*, 648 F.2d at 1205 ("[w]e do not foreclose a
26 finding of a voluntary release when the release is entered into by a prisoner without presence or
27 assistance of counsel, but these circumstances must be weighed carefully"). While the absence of
28 counsel does not always mean that a release was not voluntary or deliberately entered into, this

1 fact militates in favor of finding that it was not.

2 While the court does not have specific information about Plaintiff's state of mind or
3 whether the atmosphere was particularly coercive or non-coercive, the court notes that Plaintiff
4 did argue in opposition to the motion to enforce the settlement that he felt pressure to enter into
5 the agreement.⁹ While Magistrate Judge Cooke and District Judge Hicks ultimately concluded
6 that Plaintiff agreed to enter into a settlement agreement and was not under duress to do so, this
7 is at least relevant as to his state of mind insofar as the release of all claims provision is
8 concerned, particularly where that provision was not one of the terms recited on the record at the
9 conclusion of the mediation.

10 In sum, a genuine dispute of material fact exists as to whether Plaintiff agreed to the
11 release of all claims provision proffered by Defendants and if he did, whether he did so
12 voluntarily, deliberately and after being informed of its consequences. Therefore, Defendants'
13 motion should be denied.

14 Because of these disputed issues of fact, the court need not reach the issue raised by
15 Defendants of whether this action *arises from or is related to* 3:12-cv-00024-LRH-VPC. If the
16 release provision is ultimately held to be valid and enforceable against the Plaintiff (*i.e.*, it is
17 determined that it was a term of the settlement and it was voluntarily and deliberately agreed to
18 after Plaintiff was informed of its consequences), the parties will then have an opportunity to
19 address the interpretation of this contract provision and can argue whether or not the release is
20 ambiguous and whether it encompasses the specific allegations asserted in this lawsuit under
21 Nevada law. *See Sheehan & Sheehan v. Nelson Malley and Co.*, 117 P.3d 219, 223, 121 Nev.
22 481 (2005) (in Nevada, contract interpretation is a legal issue determined by the court); *accord*
23 *Canfora v. Coast Hotels and Casinos, Inc.*, 121 P.3d 599, 603, 121 Nev. 771 (2005) (per curiam)

24
25 ⁹ This Report and Recommendation is *not* calling into question the determination made by Magistrate
26 Judge Cooke and District Judge Hicks to enforce the settlement agreement against Plaintiff insofar as they
27 determined that the recitation of terms on the record at the conclusion of the mediation comported with the material
28 terms in the written agreement. The undersigned does conclude, however, that the release of all claims provision
contained in the written agreement was not one of the terms recited on the record by Ms. Crowley. As discussed,
infra, this is not fatal to the formation of the settlement agreement in 3:12-cv-00024-LRH-VPC. It does raise several
issues regarding the Defendants' reliance on the release of all claims provision in *this* action: whether it was a term
of the settlement and if so, whether Plaintiff agreed to a release of all claims arising from or related to 3:12-cv-
00024-LRH-VPC voluntarily, deliberately and after being sufficiently informed of the consequences.

1 (and stating that unambiguous contracts (those not reasonably susceptible to more than one
2 interpretation) are interpreted according to their plain meaning).

3 **IV. RECOMMENDATION**

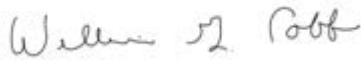
4 **IT IS HEREBY RECOMMENDED** that the District Judge enter an Order **DENYING**
5 Defendants' Motion to Dismiss (Doc. # 36).

6 The parties should be aware of the following:

7 1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
8 this Report and Recommendation within fourteen days of receipt. These objections should be
9 titled "Objections to Magistrate Judge's Report and Recommendation" and should be
10 accompanied by points and authorities for consideration by the district judge.

11 2. That this Report and Recommendation is not an appealable order and that any notice of
12 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
13 until entry of judgment by the district court.

14 DATED: June 19, 2014.

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WILLIAM G. COBB
17 UNITED STATES MAGISTRATE JUDGE
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